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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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| EXAMINER |
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STRIMBU, GREGORY J

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3634

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02/18/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

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| Office Action Summary | Application No. 09/847,759 | Applicant(s) HALL, MARK J. | |
| | Examiner Gregory J. Strimbu | Art Unit 3634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22-24,26-37,39,49-53 and 56-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,22-24,26-37,39,49-53 and 56-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

It should first be noted that response of October 6, 2008 is non-compliant at least because claims 56 and 62 do not have the proper status identifiers. However, in light of the prosecution history of this case, the amendment has been addressed below.

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on July 30, 2007 is acknowledged. The traversal is on the ground(s) that there would be no serious burden on the examiner to examine all of the claims currently in the application. In light of the prosecution history of the application, the restriction requirement has been withdrawn at this time.

Drawings

The drawing correction filed October 6, 2008 has been approved. The drawings, however, are still objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters 22b and 16' have both been used to designate the framework in figures 1, 3, 5 and 6. The drawings are objected to because they include superfluous lettering such as "COOLER SHELF" in figures 4 and 5. If the applicant wishes to identify other elements illustrated in the drawings, such as the clip and notches in figure 4, they should be identified with reference characters. It should be noted that 37 CFR 1.83(a) refers to labeling with reference characters. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

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include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 12' and 14'. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cooler, visi-cooler, walk-in cooler and glass door cooler must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendments filed March 1, 2004 and October 6, 2008 are objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is:

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1) the placement of the shelf 16 on the bottom of the shelf structure with the support legs 22a directly attached to the cooler shelf from below the cooler shelf as shown in figures 5 and 6. Note that the original disclosure includes panels 10e and 10f and are on top of the "shelf" 16. However, figures 5 and 6 fail to include said panels or the horizontal portions of the rods 10a, 10b, or 10c.

2) the threaded fasteners 15 extending through the panels 10e and 10f as shown in figure 3.

3) the support legs having different lengths when the rack is mounted on the underside of a shelf as shown in figure 6.

The amendment filed March 5, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: recitations such as "a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly" on lines 9-12 of claim 20, lines 11-14 of claim 30, lines 1-5 of claim 33, lines 11-14 of claim 36, lines 1-5 of claim 58. Although the specification provides support for allowing the insertion of cans at the rear of the rack (see column 2, line 51 and column 4, line 61), it does not provide support for a clearance between the rack and the shelf to allow the insertion of cans into a rear of the rack when the rack is mounted to the underside of the shelf. It should be noted that column 4, lines 26-29 do not refer

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to any spacing much less a spacing between a rear portion of the shelf and rearward portion of the support assembly.

Additionally, recitations such as “wherein the first and second pairs of support legs are sized such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the upper ends of the first and second pairs of the support legs, from a horizontal shelf” on lines 15-17 of claim 20, lines 17-18 of claim 30, lines 8-9 of claim 36, lines 16-18 of claim 63. Although the specification provides for the support legs having different lengths (see column 3, lines 2-6 and column 4, lines 39-45), it does not provide support for the legs having different lengths when the rack is mounted to the underside of a shelf. It should be noted that the recitation referring to the various bars and rods in column 4, lines 26-29, is referring to the shape and style of the bars and does not refer to the forward portion hanging lower and the rearward portion when the rack is hanging from a shelf.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 1-20, 22-24, 26-37, 39, 49-53 and 56-69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “thereon” on line 13 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. It is unclear what element of the invention is on another element of the invention. Recitations such as “in

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a direction from the second plane” on lines 11-12 of claim 6 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Is the applicant attempting to set forth that the stop extends in a direction? Recitations such as “the additional shelving” on line 14 of claim 14 render the claims indefinite because they lack antecedent basis. Recitations such as “another structure” on lines 2-3 of claim 15 render the claims indefinite because it is unclear if the applicant is referring to the shelf structure set forth above or is attempting to set forth another structure in addition to the one set forth above. Recitations such as “shelf” on line 17 of claim 20 render the claims indefinite because it is unclear if the applicant is referring to the shelf set forth above or is attempting to set forth a shelf in addition to the one set forth above. Recitations such as “beverage containers” on line 2 of claim 27, line 2 of claim 29, and line 12 of claim 30 render the claims indefinite because it is unclear if the applicant is referring to the beverage containers set forth above or is attempting to set forth additional beverage containers. On line 13 of claim 36, it is suggested the applicant change the first recitation of “the” to --a-- to avoid confusion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 5, 18 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickson (US 3007580). Dickson discloses a shelf structure 10 comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane;

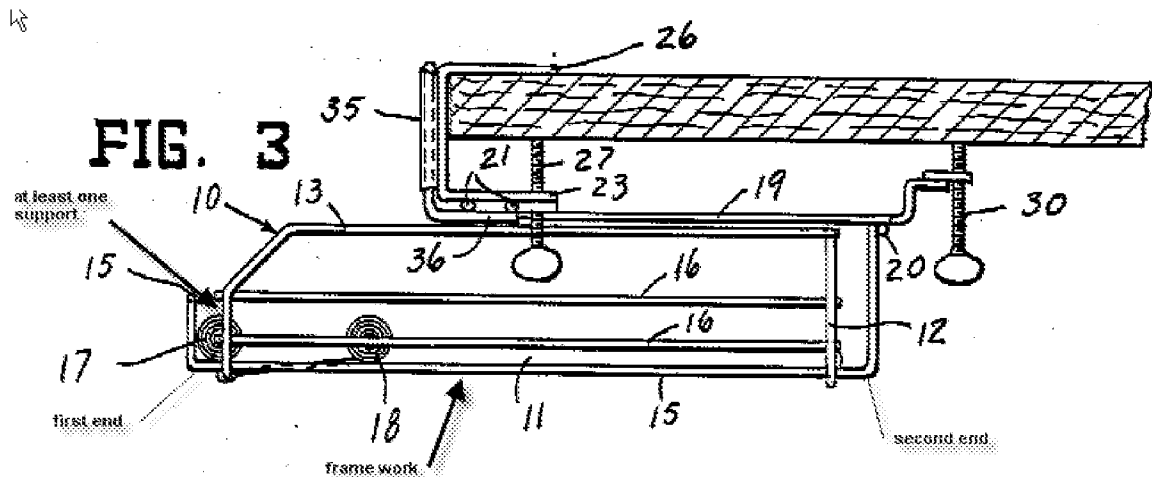
a framework (not numbered, but shown in figure 3) defining a second plane; and

at least one support (not numbered, but comprising one of the vertical portions of the rod 13) connecting at least the front rod member and the framework, wherein at least a portion of the framework (not numbered, but shown in figure 3) extends at least forward of a projection 36 of the front rod member 21 thereon with a stop comprising the U-shaped portion of 15, the stop extending in a direction from the second plane with at least a component toward the first plane, and

wherein the framework comprises further rod members 15 each having a first end (labeled below) and a second end (labeled below) and extending from the first end at the stop to the second end that is rearward of a rearward most one of the at least one other rod member 21,

members 22 on the front 21 and other rod members 21, 36 for fixing the framework under another structure.

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Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Dickson.

Dickson discloses a shelf structure 10 configured to rest on and engage a shelf structure which is horizontal or inclined, the shelf structure comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane and configured to support additional shelving above the first plane;

a framework (not numbered, but shown in figure 3) defining a second plane; and

at least one support (not numbered, but comprising one of the vertical portions of the rod 13) connecting at least the front rod member and the framework,

wherein at least a portion of the framework (not numbered, but shown in figure 3) extends at least forward of a projection 36 of the front rod member 21 thereon with a stop comprising the U-shaped portion of 15, the stop extending in a direction from the second plane with at least a component toward the first plane, and

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further comprising members 22 on the front 21 and other rod members 21, 36 for fixing the framework under the additional shelving.

Claim 68 is rejected under 35 U.S.C. 102(b) as being anticipated by Dickson.

Dickson discloses a shelf structure comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane;

a framework (not numbered, but comprising the rods 15) defining a second plane; and

at least one support 19 directly connecting at least the front rod member 21 and the framework, wherein at least a portion of the framework extends at least forward of a projection 22 of the front rod member thereon with a stop (not numbered, but comprising one of the vertical portions of the rods 15), the stop extending in a direction from the second plane with at least a component toward the first plane, and wherein the framework comprises further rod members 15 each having a first end and a second end and extending from the first end at the stop to the second end that is rearward of a rearward most one of the at least one other rod member.

Claim 69 is rejected under 35 U.S.C. 102(b) as being anticipated by Dickson.

Dickson discloses a shelf structure configured to rest on and engage a shelf, the shelf structure comprising

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a front member 21 and at least one other member 21 rearwardly spaced from the front member and, together with the front member, defining a first plane and configured to support additional shelving above the first plane;

a framework (not numbered, but comprising the rods 15) defining a second plane; and

at least one support 19 directly connecting at least the front member and the framework,

wherein at least a portion of the framework extends at least forward of a projection 36 of the front member thereon with a stop (not numbered, but comprising at least one of the vertical portions of the rods 15) extending in a direction from the second plane with at least a component toward the first plane; and

members 22 on the front and other members configured to fix the framework under another structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 15-17, 53 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of Jepson claim 1 in view of Buday (US 5240124). The admitted prior art in the preamble of claim 1 discloses one of

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a cooler, visi-cooler, walk-in cooler and glass-door cooler having fixed or adjustable shelves. The preamble of claim 1 is silent concerning a shelf structure configured to rest on and engage one of the shelves.

However, Buday discloses a shelf structure 11 configured to rest on and engage one of the shelves which is horizontal or inclined, the shelf structure comprising:

a front rod member 42 and at least one other rod member (not numbered, but shown in figure 1 at the rear of the shelf structure 11) rearwardly spaced from the front rod member 42 and, together with the front rod member 42, defining a first plane and configured to support additional shelving above the first plane;

a framework 22a, 22b defining a second plane; and

at least one support 32 connecting at least the front rod member 42 and the framework 22a, 22b, wherein at least a portion of the framework (not numbered, but shown in figure 1) extends at least forward of a projection (labeled below) of the front rod member 42 thereon with a stop (not numbered, but comprising one of the rods extending between the rod 26 to the rod extending above and parallel to the rod 26), the stop extending in a direction from the second plane with at least a component toward the first plane;

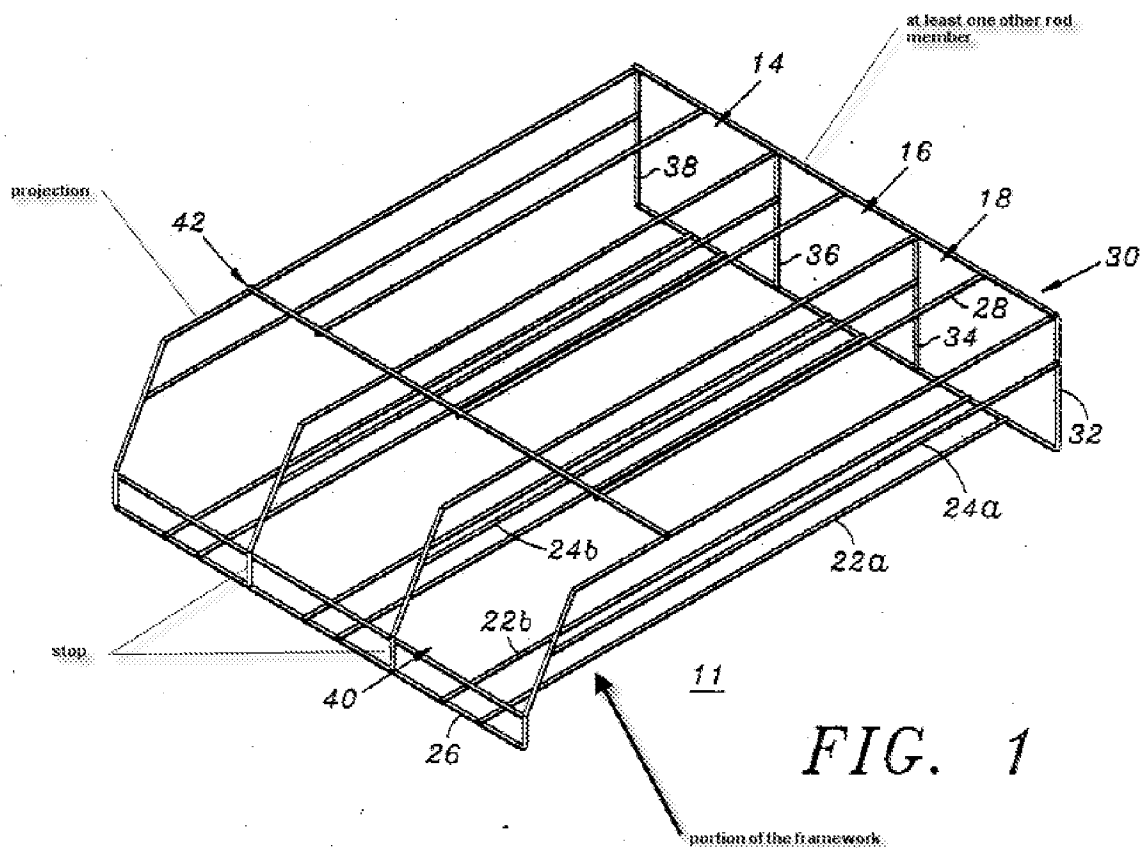
at least one member 34 connecting the front and other rod members (claim 2);

the at least one support 32 along with the support 38 comprise legs extending from opposite ends of the front rod 42 and the rear rod (claims 3 and 4);

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members (not numbered, but comprising the rods extending between the front rod 42 and the rear most rod) on the front and other rod members for fixing the framework under another structure (claims 15-17, 62).

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of claim 1 with a shelf structure, as taught by Buday, in order to easily dispense items from the cooler.



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Claims 9-12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of claim 1 in view of Buday as applied to claims 1-4, 15-17, 53 and 62 above, and further in view of Lockwood (4732282). Lockwood discloses a shelf structure comprising a front panel 12 at a front side of a stop.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of claim 1, as modified above, with a front panel, as taught by Lockwood, to indicate the price of the item being dispensed from the shelf structure.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson as applied to claims 5, 18 and 56 above, and further in view of Lockwood (US 4732282). Lockwood discloses a shelf structure comprising a front panel 12 at a front side of a stop.

It would have been obvious to one of ordinary skill in the art to provide Dickson with a front panel, as taught by Lockwood, to indicate the price of the item being dispensed from the shelf structure.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of Jepson claim 6 in view of Dickson. The admitted prior art in the preamble of claim 6 discloses a cooler, visi-cooler, walk-in cooler and

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glass-door cooler having fixed or adjustable shelves. The admitted prior art in the preamble of claim 6 is silent concerning an additional shelf structure.

However, Dickson discloses a shelf structure 10 comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane;

a framework (not numbered, but shown in figure 3) defining a second plane;

at least one support (not numbered, but comprising one of the vertical portions of the rod 13) connecting at least the front rod member and the framework,

wherein at least a portion of the framework (not numbered, but shown in figure 3) extends at least forward of a projection 36 of the front rod member 21 thereon with a stop comprising the U-shaped portion of 15 in a direction from the second plane with at least a component toward the first plane, and wherein the framework comprises further rod members 15 extending from one end at the stop to an opposite end that is rearward of a rearward most one of the at least one other rod member 21.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of claim 6 with a shelf structure, as taught by Dickson, to save space within the cooler.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of Jepson claim 7 in view of Dickson. The admitted prior art in the preamble of claim 7 discloses a cooler, visi-cooler, walk-in cooler and

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glass-door cooler having fixed or adjustable shelves. The admitted prior art in the preamble of claim 7 is silent concerning an additional shelf structure.

However, Dickson discloses a shelf structure 10 comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane;

a framework (not numbered, but shown in figure 3) defining a second plane;

at least one support (not numbered, but comprising one of the vertical portions of the rod 13) connecting at least the front rod member and the framework, and

wherein at least a portion of the framework (not numbered, but shown in figure 3) extends at least forward of a projection 36 of the front rod member 21 thereon with a stop comprising the U-shaped portion of 15 in a direction from the second plane with at least a component toward the first plane, wherein the at least one support comprises legs extending from opposite ends of the front and other rod members, and wherein the framework comprises further rod members 15 extending from one end at the stop to an opposite end that is rearward of a rearward most one of the at least one other rod member 21.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of claim 7 with a shelf structure, as taught by Dickson, to save space within the cooler.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of claim 8 in view of Dickson. The admitted prior art in the preamble of claim 8 discloses a cooler, visi-cooler, walk-in cooler and glass-door cooler having fixed or adjustable shelves. The admitted prior art in the preamble of claim 8 is silent concerning a shelf structure.

However, Dickson discloses a shelf structure comprising:

a front rod member 21 and at least one other rod member 21 rearwardly spaced from the front rod member and, together with the front rod member, defining a first plane;

a framework (not numbered, but shown in figure 3) defining a second plane;

at least one support (not numbered, but comprising one of the vertical portions of the rod 13) connecting at least the front rod member and the framework, and

at least one member 36 connecting the front and other rod members,

wherein at least a portion of the framework extends at least forward of a projection 22 of the front rod member thereon with a stop comprising the U-shaped portion of 15 in a direction from the second plane with at least a component toward the first plane and wherein the framework comprises further rod members 15 extending from one end at the stop to an opposite end that is rearward of a rearward most one of the at least one other rod member.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of claim 8 with a shelf structure, as taught by Dickson, to save space within the cooler.

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Claims 20, 22-24, 26, 28, 29, 30-32, 35, 36, 39, 49-52 and 63-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson in view of Lockwood.

Dickson discloses a rack 10 comprising

a support assembly 15 having a forward portion (labeled below) and a rearward portion (labeled below) and being configured to support a plurality of beverage containers;

a first pair of support legs (labeled below) having lower ends connected to the forward portion;

and a second pair of support legs (labeled below) having lower ends connected to the rearward portion, each of the first and second pairs of support legs having upper ends (labeled below) configured to hang the rack from a shelf disposed above the rack;

a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow the beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly;

a stop (labeled below) disposed at the forward portion of the support assembly,

wherein the first and second pairs of support legs are sized, i.e., the second pair of support legs are longer than the first pair of support legs, such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the upper ends of the first and second pairs of the support legs, from a horizontal shelf. It should be noted that the rack 10 of Dickson, although not shown, is capable of hanging with the front portion lower than the rear portion by merely adjusting the threaded fastener 30

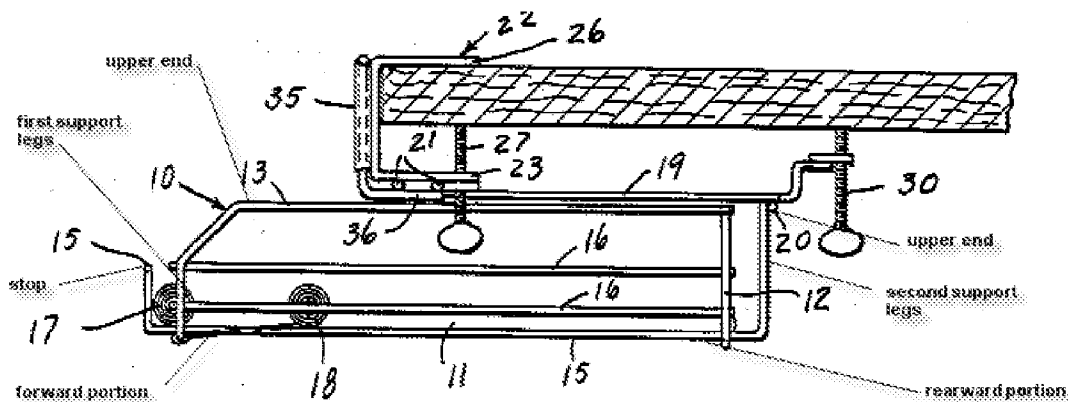
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(see column 2, lines 42-46); threaded fasteners 27 connecting the upper ends of the first and second pairs of support legs to the shelf; wherein the support assembly is configured to support a plurality of parallel files of beverage containers extending between the rearward portion and the forward portion; wherein the support assembly comprises a wire frame configured to allow cylindrical beverage containers to roll along an upper surface thereof; a plurality of supports 21, 23 configured with sufficient strength to support additional shelving above the beverage containers supported on the first surface; the plurality of supports comprise at least two rod members; apertures (not numbered, but shown where the fasteners 27 penetrate the supports 23). Dickson is silent concerning a panel.

However, Lockwood discloses a shelf structure comprising a front panel 12 mounted on a front portion of a rack; the panel 12 forms a stop; the panel includes at least one substantially vertical surface as shown in figure 1 and a curve (shown as the bend at the top and the bottom of the panel).

It would have been obvious to one of ordinary skill in the art to provide Dickson, as modified above, with a front panel, as taught by Lockwood to indicate the price of the item being dispensed from the shelf structure.

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Claims 27, 33, 34 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson in view of Lockwood as applied to claims 20, 22-24, 26, 28, 29, 30, 32, 35, 36, 39, 49-52 and 63-67 above. Dickson, as modified above, is silent concerning the sizing of the first and second pair of support legs with respect to articles having a dimension less than 2.5 inches.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the first and second pairs of support legs with a sizing such that the rack can only receive articles having at least one dimension less than about 2.5 inches.

Claims 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson in view of Lockwood. Dickson discloses a shelf 10 comprising:

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a support assembly (labeled below) having a forward portion (labeled below) and a rearward portion (labeled below), the support assembly defining a support surface configured to support a plurality of cylindrical beverage containers;

a stop (labeled below) disposed at the forward portion of the support assembly;

first and second support portions 22 disposed at the forward portion of the support assembly, the first and second support portions including upper ends, respectively, adapted to be disposed above the plurality of cylindrical beverage containers supported on the support surface;

at least first and second apertures (not numbered, but comprising the apertures through which the fasteners 27 extend) disposed adjacent the upper ends of the first and second support portions, respectively, the first and second apertures being configured to receive fasteners 27 for supporting the forward portion of the support assembly from a shelf 32 above the support assembly, the first and second apertures being spaced rearwardly from the stop;

a third support portion (labeled below) disposed at the rearward portion of the support assembly, the third support portion including an upper end (not numbered, but shown in figure 3); and

at least a third aperture (not numbered, but comprising the aperture through which the fastener 30 extends) disposed adjacent the upper end of the third support portion, the third aperture being configured to receive a fastener 30 for supporting the rearward portion of the support assembly from a shelf above the support assembly;

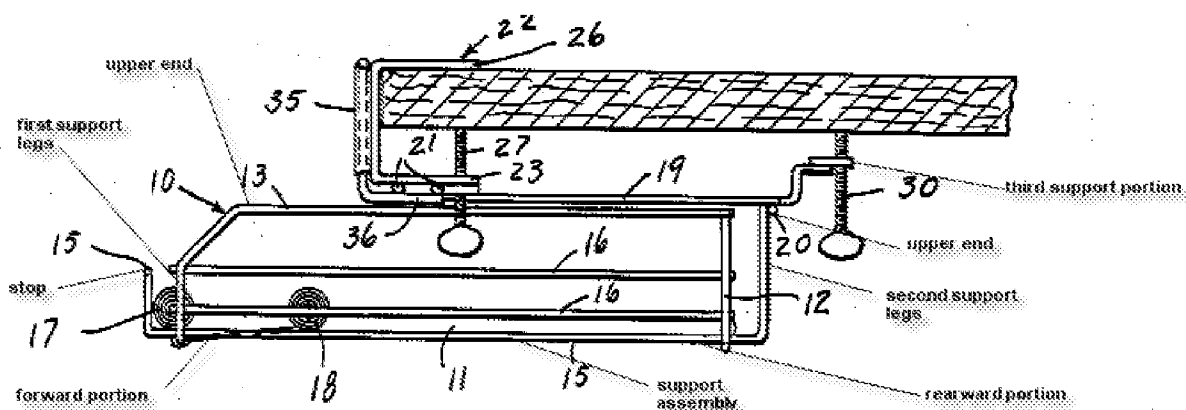
wherein the third aperture is spaced from a rearward-most portion of the rearward portion of the support assembly such that cylindrical beverage containers can be placed onto the rearward portion of the support assembly when the third aperture is connected to a shelf 32 disposed above the support assembly by fasteners. Dickson is silent concerning a panel configured to support a label and a fourth support portion.

However, Lockwood discloses a shelf structure comprising a front panel 12 mounted on a front portion of a rack.

It would have been obvious to one of ordinary skill in the art to provide Dickson, as modified above, with a front panel, as taught by Lockwood, to indicate the price of the item being dispensed from the shelf structure.

Additionally, it would have been obvious to one of ordinary skill in the art to provide Dickson with a fourth support portion, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art.

St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.



Claims 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson in view of Lockwood as applied to claims 57-59 above, and further in view of Wagner (US 4700849). Wagner discloses a support assembly comprising horizontally extending plates 20 and 22 each including two apertures for attaching the support assembly to a support 60 disposed above the support assembly.

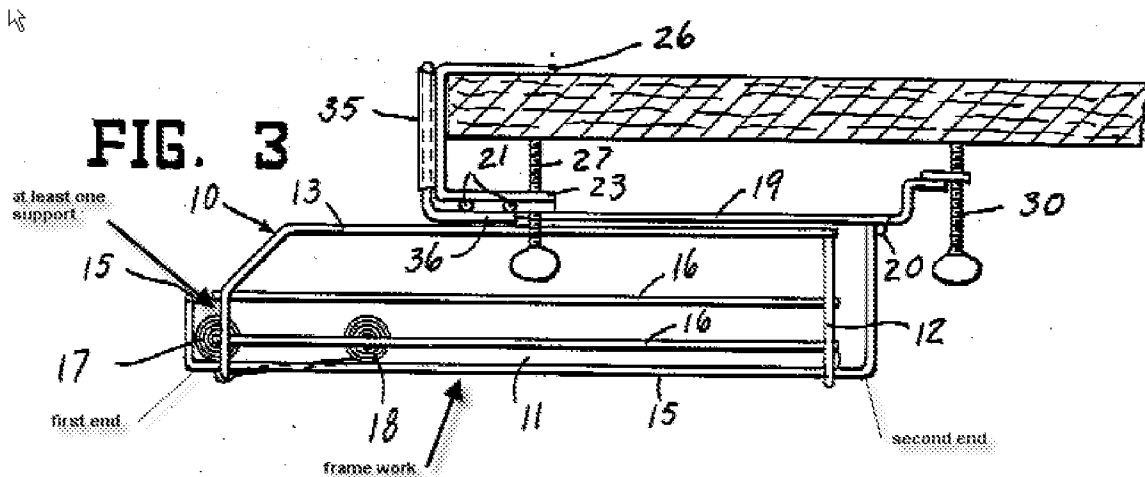
It would have been obvious to one of ordinary skill in the art to provide Dickson, as modified above, with attaching plates, as taught by Wagner, to more securely attach the support assembly to the shelf.

Response to Arguments

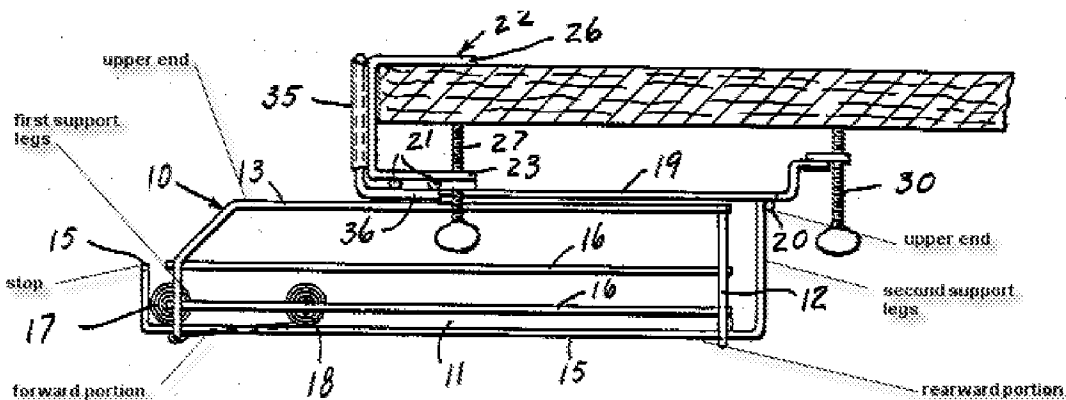
Applicant's arguments filed October 6, 2008 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Dickson, the examiner respectfully disagrees. Dickson, in figure 1 and 3 shows at least one support connecting the front rod member 21 to the framework. The at least one support comprises the vertical portion of the rod 13 as shown in figure 3 below.

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Additionally, Dickson, as shown in the figure below, discloses first support legs which are shorter than second support legs and the entire shelf structure 10 can be positioned such that the first support legs are lower than the second support legs via the screw 30 when the shelf structure 10 is hanging from a shelf.

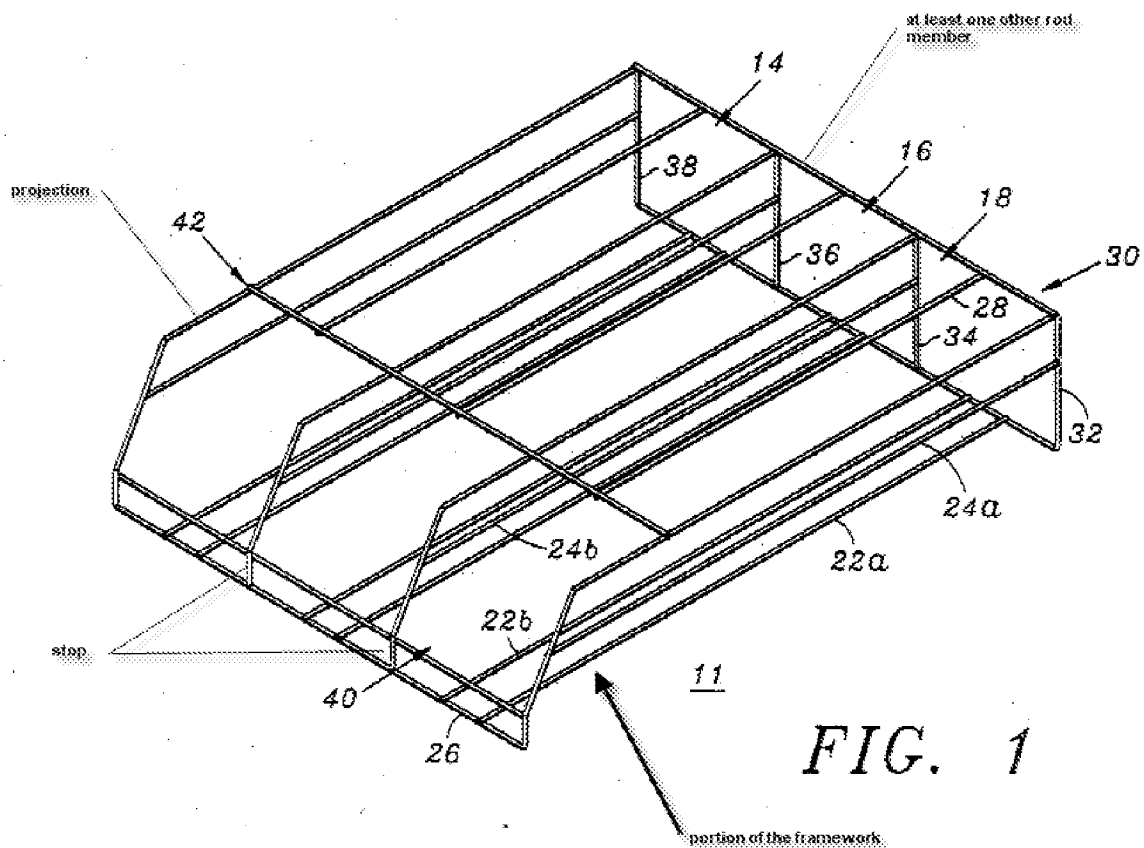


Also, the applicant's comments concerning Dickson failing to disclose fasteners which support the shelf structure 10 are not persuasive because they are not supported by the claim language. Note that claim 57 only requires the aperture to be capable of receiving fasteners which are for supporting the shelf assembly. Clearly the apertures of Dickson are capable of receiving fasteners which could support the shelf assembly.

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In response to applicant's argument that Wagner is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Wagner and Dickson were concerned with the storage and display of products underneath a supporting structure. The fact that Dickson's invention is made of wire/rods and Wagner's invention is made from planar elements does not make the inventions non-analogous *per se*.

With respect to the applicant's comment concerning the rejection of claims 1-4, 15-17, 53 and 62 as being unpatentable over the admitted prior art in the preamble of Jepson claim 1 in view of Buday (US 5240124), the examiner respectfully disagrees. As shown in figure 1, Buday discloses at least one support 32 which connects the front rod member 42 via the members 28 to the framework 22a, 22b. The applicant's argument to the contrary is analogous to arguing that a person's foot is not connected to his/her head.



Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634